

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**CIVIL CONFERENCE
MINUTE ORDER**

BEFORE: A. KATHLEEN TOMLINSON
U.S. MAGISTRATE JUDGE

DATE: 03/26/10
TIME: 3:00 PM

The Phoenix Insurance Co. -v- Modern Sprinkler

TYPE OF CONFERENCE: **TELEPHONE CONFERENCE**

APPEARANCES: Plaintiff Robert Scheps
Defendant Domingo Gallardo
Third-Party Defendant David Gary

THE FOLLOWING RULINGS WERE MADE:

Today's Telephone Conference was held to address the issues raised in Defendant's letter [DE 48] regarding a recent decision issued by Justice Winslow in *Weiss & Weiss, P.C. v. FP 300 OCR LLC*, No. 07-11457 (N.Y. Sup. Ct. N.Y. County Mar. 10, 2010). Defendant asserts that this decision may preclude litigation of certain issues in the instant action, some of which are the subject of Defendant's pending motion for summary judgment.

In light of today's discussions, Defendant's application [DE 48, 49] to withdraw the pending Motion for Summary Judgment [DE 40] is hereby GRANTED. Defendant will serve an amended summary judgment motion, as discussed during today's conference, by April 23, 2010. Plaintiff and Third-Party Defendant will serve their respective opposition papers by May 17, 2010. Defendant will serve its reply, if any, by May 25, 2010. The parties are reminded that pursuant to my Individual Practice Rule III(C), no motion papers shall be filed until the motion has been fully briefed.

In light of this ruling, Defendant's Motion for Summary Judgment [DE 40] is hereby deemed WITHDRAWN.

SO ORDERED

/s/ A. Kathleen Tomlinson
A. KATHLEEN TOMLINSON
U.S. Magistrate Judge